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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,128	03/31/2004	Chandra Shekhar Nautiyal	026063-00003	3720

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EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
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1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
31 DAYS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/813,128

Applicant(s)

NAUTIYAL ET AL.

Examiner

JOHN PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 and 50-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-48 and 50-69 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant is advised that the previous Examiner who examined this application has left the USPTO and this application has been transferred to the undersigned Examiner. After reviewing the record in this application, it has been determined that a restriction requirement is necessary at this time.

37 CFR 1.142(a) and MPEP 811 provide that a restriction requirement "may be made at any time before final action" and "as soon as the need for a proper requirement develops." See also MPEP 811.01-811.04. Here, the application is under non-final status and the need for a proper requirement has developed. The undersigned Examiner is new to the application, and a review of the claims and prosecution thus far shows that a proper restriction is necessary.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 2, drawn to a *fermented* composition of bovine urine + crushed neem leaves (no garlic), classified in class 424, subclasses 115, 537 and 761, class 504, subclasses 102 and 117.
- II. Claim 3, drawn to a *fermented* composition of bovine urine + crushed garlic bulbs (no neem), classified in class 424, subclasses 115, 537 and 754, class 504, subclasses 102 and 117.
- III. Claims 2, 3 and 9-16, drawn to a *fermented* composition of bovine urine + crushed neem leaves + crushed garlic bulbs & process of preparing said

- composition, classified in class 424, subclasses 115, 537, 754 and 761, class 504, subclasses 102 and 117.
- IV. Claim 18, drawn to method for promoting plant growth using crushed neem leaves (no urine, no garlic, fermentation not required), classified in class 504, subclass 189.
- V. Claim 19, drawn to method for promoting plant growth using crushed garlic bulbs (no urine, no neem, fermentation not required), classified in class 504, subclass 189.
- VI. Claims 20 and 24, drawn to method for promoting plant growth using bovine urine (no garlic, no neem, fermentation not required), classified in class 504, subclass 189.
- VII. Claims 21 and 24, drawn to method for promoting plant growth using bovine urine + crushed neem leaves (no garlic, fermentation not required), classified in class 504, subclasses 102.
- VIII. Claims 21 and 24, drawn to method for promoting plant growth using bovine urine + crushed garlic bulbs (no neem, fermentation not required), classified in class 504, subclasses 102.
- IX. Claims 21, 24 and 50, drawn to method for promoting plant growth using bovine urine + crushed garlic bulbs + crushed garlic bulbs (fermentation not required), classified in class 504, subclasses 102.

Claims 1 and 4-8 link inventions I, II and III. The restriction requirement between the linked inventions is **subject to** the nonallowance of the linking claims, claims 1 and 4-8.

Claims 17, 22-23, 25-48 and 51-69 link inventions IV, V, VI, VII, VIII and IX. The restriction requirement between the linked inventions is **subject to** the nonallowance of the linking claims, claims 17, 22-23, 25-48 and 51-69.

Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

As stated earlier, a review of the application has shown a need to require the restriction as set forth above. The nine inventions are independent and/or distinct due to the different active ingredients that the claims read on. Inventions I-III are required to be fermented, whereas inventions IV-IX can be unfermented. Additionally, each of the inventions utilizes a distinct active ingredient or a distinct combination of active ingredients.

There would be undue burden on the Examiner if the restriction as set forth above were not required. It can be mentioned here that the record of this application shows the previous Examiner's search to be incomplete because the compositions (I-III) were not searched in various subclasses of class 424 where the compositions per se may be found and the methods (IV-IX) were not searched in various subclasses of class 504 wherein the method may be found due to the complex use of "and/or" in applicant's claims. All such search fields were not searched previously.

As can be seen from above, the nine inventions have variously divergent classification. Further, there is recognition of divergent subject matter in the art from the way class 504 treats plural active ingredients (subclasses 118-149) separately from single active ingredients (subclasses 187-357) and fermentates (subclass 117) from non-fermentates. U.S. Patent 3,165,394 is evidence that use of bovine urine has formed a separate subject for inventive effort. U.S. Patent 5,856,526 is evidence that use of neem plant material has formed a separate subject for inventive effort. U.S.

Patents 6,511,674, 6,548,085, and 6,231,865 are evidence that use of garlic has formed a separate subject for inventive effort. Moreover, a clearly divergent field of search would be required to thoroughly search any one of the inventions because, for example, searching the commercial databases would require different search queries to account for the distinct active ingredients. Therefore, undue burden is established. See MPEP 808.02.

For these reasons of distinctness and undue burden, the restriction requirement as set forth above is deemed to be proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions

unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'John Pak', is positioned above the printed name.

John Pak
Primary Examiner
Technology Center 1600